

REMARKS

Applicant has carefully considered the Decision on Appeal mailed by the Board of Patent Appeals and Interferences on September 15, 2008. The following amendment and response is submitted in reply thereto.

The Decision on Appeal reversed the previously pending enablement and written description rejections under 35 U.S.C. § 112 (Decision at p. 14). The Decision on Appeal also affirmed the rejection of claims 10-12 under 35 U.S.C. § 103, but for reasons different than those articulated by the examiner (Decision at p. 14). As such, the rejection of claims 10-12 under 35 U.S.C. § 103 constitutes a new ground of rejection and is the sole remaining rejection. Applicant submits herewith an amendment to claims 10-12 and requests that the examiner reconsider the matter as provided under 37 C.F.R. § 41.50(b)(1).

Claims 5, 44 and 45 are amended to correct a typographical error. Claims 52 and 53 are amended to correct claim dependencies. Claims 10 and 11 are amended to incorporate the limitations of claims 42 and 43, which were not previously rejected under 35 U.S.C. § 103, and which are canceled by the instant amendment. Applicant respectfully requests entry of the amendment and early notice of allowance.

Status of the Claims

Upon entry of the foregoing amendment, claims 1, 5-8, 10-12, 24, 25 and 44-57 will be pending.

The Rejection of Claims 10-12 under 35 U.S.C. § 103(a)

Claims 10-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of U.S. Patent 6,063,768 ("First") and The Merck Manual of Diagnosis and Therapy, pp. 318-320, 1308-1311 and 2368 (16th Ed., Robert Berkow *et al.*, eds, Merck Research Laboratories, Rahway, N.J. 1992 ("MERCK")). Applicant respectfully traverses the rejection for the following reasons.

Claims 10-12, as currently amended, require that the therapeutically effective dose is sufficient to reduce at least one symptom of inflammation but less than a dose necessary to produce substantial muscle weakness. Nothing in either First or MERCK teaches or suggests this dosage requirement.

As explained above and acknowledged in the Decision on Appeal (FF 1 and 2; Decision p. 7) support for the amendment may be found throughout the specification and also in previously pending dependent claims 42 and 43, which were not rejected over the combination of First and MERCK.

Applicant respectfully requests that the rejection be withdrawn.

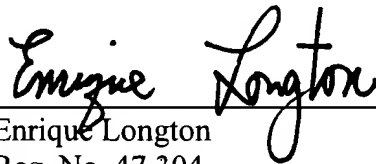
Conclusion

Applicant respectfully requests reconsideration and withdrawal of the sole pending rejection and early allowance of the pending claims. Should the Examiner find that a telephone interview would further prosecution of the application, he is invited to contact the undersigned at his convenience.

The Commissioner is authorized to charge any additional fees associated with this filing, or credit any overpayment, to Deposit Account No. 13-3250 (matter number 33677.00600). **EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 13-3250. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with C.F.R. § 1.136(a)(3).

Respectfully submitted,

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